

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

FAO No. 8046 of 2017 (O&M)
Date of decision: December 18, 2019

Parveen Kumar and others

...Appellants

Versus

Union of India and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. S.K. Bawa, Advocate,
for the appellant.

Mr. R.S. Madan, Advocate,
for respondent No.2—NHAI.

JAISHREE THAKUR, J.

1. This appeal has been filed seeking to challenge the judgment of the Additional District Judge, Jalandhar, dated 20.07.2016, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act 1996 (for short '**the Act**') for setting aside award dated 25.03.2011 passed by the Arbitrator-cum-Commissioner, Jalandhar Division, have been allowed.

2. It is pleaded case of the appellants that their land measuring 4 marla out of land measuring 1 kanal 2 marla, comprising in Khasra No.3//21/2, 22/1/2 situated in village Latifpur, Tehsil Mukerian, District Hoshiarpur, was acquired for public purposes for widening and four laning of Jalandhar—Pathankot National Highway Road. The land was acquired

by Notification published on 24.12.2004 and the competent authority assessed the compensation at the market rate as prevalent on the date of acquisition i.e. @ ₹27,000/- per marla for boundary wall and ₹50,000/- for commercial land. The appellants filed an application for enhancement of the award, which was allowed and the value of the land was determined as ₹50,000 to ₹1,50,000/- per marla. Against the said award, the Union of India—respondents No. 1 and 2 herein filed objections under Section 34 of the Act for setting aside award dated 25.03.2011, on the ground that the Arbitrator, while assessing the compensation, had not given adequate opportunities to the Union of India—respondents. The Additional District Judge, on perusal of the proceedings which took place before the Arbitrator—cum—Commissioner, Jalandhar Division, came to hold that no sincere efforts had been made by the Arbitrator to serve the Union of India and thereby the Arbitrator did not follow the principle of audi alteram partem. Further the Additional District Judge, while relying upon the judgment rendered by this Court in **FAO No. 8032 of 2015 titled M/s Mahadev Rice & General Mills & another Versus Punjab State Warehousing Corporation and another decided on 2.12.2015**, came to the conclusion that the objecting court has no power to remand the proceeding back to the Arbitral Tribunal, once the award has been set aside. Aggrieved against the said objections being allowed, the instant appeal has been filed.

3. Learned counsel appearing on behalf of the appellants herein argues that the only remedy available to the landlords to get compensation under the National Highway Authority Act is to approach an Arbitrator for

enhancement of compensation as assessed by the competent authority and once the award of the competent authority is set aside, the landowners would be deprived of fair compensation. It is also argued that in similar cases pertaining to the same Notification issued under section 3-A of the National Highway Authority Act on 24.12.2004, similarly situated landowners have already been given compensation and the same stands deposited by the authority concerned. In this regard, reliance has been placed upon the judgment passed in **FAO No. 1801 of 2017 titled Union of India and another Versus Hira Lal and others** and **FAO No. 3594 of 2015 titled Seema Kumari Versus Union of India and others**, decided on 11.12.2018 which were deposed of in terms of judgment passed in **FAO No. 2778 of 2016 titled Union of India and another Versus Daljit Kaur and others** decided on 10.8.2016. Learned counsel seeks parity with the said landowners (in aforesaid cases) whose land also stood acquired under the same notification in the same village.

4. Per contra, learned counsel for the Union of India—respondents argues that sufficient opportunities were not given to the respondents herein by the Arbitrator. In fact, one Mr. I.S. Bhatia had put in appearance before the Arbitrator who was not authorised to do so. Even though sufficient hearing took place before the Arbitrator, however, the respondents herein were not properly represented and consequently could not adduce evidence to establish what was the prevalent market value of the land when the land was acquired in the year 2004. It is argued that the Arbitrator for the purpose of determining the market value has taken into consideration the

sale deeds dated 24.5.2006 which are post notification and, therefore, the Additional District Judge has rightly set aside the award of the Arbitrator. Learned counsel for the respondents also argues that the scope of an appeal under section 37 of the Act is limited as has been held by the Supreme Court in the case of **MMTC Ltd. Vs. M/s Vedanta Ltd. 2019 (4) SCC 163**. It is argued that the judgment rendered in MMTC (Supra) has clearly held that the court cannot undertake an independent assessment of the merits of the award and must only ascertain whether in the exercise of power by the Court under Section 34, he has not exceeded the scope of the provision.

5. There is no dispute with the proposition that an Arbitrator, while assessing the compensation, has to take into account the prevalent market value of the land and cannot rely upon the sale deeds post notification. It is undisputed fact that the land of the appellants was acquired by notification dated 24.12.2004, as was the land of the other landowners in village Latifpur, Tehsil Mukerian, District Hoshiarpur, and the award of the Arbitrator for them stands formalized having been attained finality. It is also admitted fact that the National Highway Authority of India sought to challenge the award of the Arbitrator passed in the case of other landowners of the Village Latifpur by filing objections under Section 34 of the Act before the Additional District Judge which were dismissed, and against which the Union of India filed an appeal before this Court being FAO No. 1801 of 2017, which, as already noticed, was disposed of in terms of judgment in FAO No. 2778 of 2016. In FAO No. 2778 of 2016, an argument was raised by the learned counsel for the Union of India which was taken

into consideration to the extent that the Arbitrator could not have taken into consideration a post notification sale deed. The Court took note that the Arbitrator had taken into account the compensation that has been allowed in the case of a village, which was just at the distance of 1 to 2 km from village Lalifpur, and whose land had been acquired for the same purpose that is for widening of the National Highway No. 1-A. The award of the Arbitrator was upheld in **FAO No. 2778 of 2016 titled Union of India Versus Daljit Kaur and others** decided on 10.8.2016 and others connected cases. It is interesting to note that in FAO No. 1801 of 2017, it has been observed by a Co-ordinate Bench that the issue regarding market value of the land etc. was covered by the judgment rendered in **Union of India Versus Daljit Kaur (Supra)**.

6. In the present case, this court finds no reason not to allow compensation as assessed by the Arbitrator by his award dated 25.3.2011, since similarly situated persons under the same notification have already been paid compensation. The argument raised by the learned counsel for the respondents that the scope under Section 37 is limited, as has been held in MMTC's case (supra) would not be relevant and applicable in the facts and circumstances of the instant case. No doubt, a court under Section 34 of the Act can set aside an award of an Arbitrator if the same is against the Public Policy or due opportunity was not given to a party to defend his case as envisaged under Section 34 (2) (iii) of the Act, but as similarly situated persons have already been given the compensation as allowed by the Arbitrator, parity has to be maintained especially in view of the fact that

there is an agreed order in FAO No. 1801 of 2017, wherein the learned counsel for the Union of India has himself admitted that the matter stands squarely covered. No cogent reason has been put forth as to why this matter ought to be treated differently from the landowners, who have already been paid compensation. The argument that the evidence was not adduced and the award is against the Public Policy, is an argument which is not sustainable in the present case.

7. Therefore, on the basis of maintaining parity and equity between the claimants who are similarly situated, this appeal is allowed and the order of the Additional District Judge, Jalandhar, is set aside and the award passed by the Arbitrator-cum-Commissioner, Jalandhar Division, is maintained.

December 18, 2019

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No